

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

**DATE: August 11, 2006
File No. RH05047901**

**NOTICE OF PROPOSED REGULATORY ACTION
REGARDING
HEALTH CARE LANGUAGE ASSISTANCE PROGRAM**

NATURE OF PROCEEDING

Pursuant to California Government Code section 11346 *et seq.*, Insurance Commissioner John Garamendi (Commissioner) proposes to commence a rulemaking proceeding to adopt Article 12.1 of Subchapter 3 of Chapter 5 of Title 10 of the California Code of Regulations regarding the *Health Care Language Assistance Program* with the Department of Insurance ("Department"). The Commissioner conducts this rulemaking proceeding to gather information and public comment concerning this proposed regulation.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt Article 12.1 pursuant to the authority of California Insurance Code (CIC) section 10133.8. The purpose of this regulation is to implement, interpret, and make specific the provisions of CIC sections 10133.8 and 10133.9.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: September 26, 2006, at 9:00 a.m. – 1:00 p.m.

**Location: Employment Development Department
750 N Street, Conference Room A
Sacramento, CA 95814**

The hearing will continue on the date noted above until all testimony has been submitted or 1:00 p.m., whichever is earlier.

REASONABLE ACCOMMODATION

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on the proposed regulations, may request assistance by contacting Elena Fishman, Staff Counsel, 300 Capitol Mall, 17th Floor, Sacramento, CA, 95814; telephone, 916-492-3507; fax, 916-324-1883. It is recommended that assistance be requested at least two weeks prior to the hearing.

PRESENTATION OF WRITTEN COMMENTS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on September 26, 2006. Please direct all written comments to the following contact person:

Elena Fishman, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3507

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

George Teekell, Staff Counsel
California Department of Insurance
45 Fremont Street
San Francisco, CA 94105
Telephone: (415) 538-4390

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on September 26, 2006. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: **fishmane@insurance.ca.gov**. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Elena Fishman and sent to the following facsimile number: **(916) 324-1883**.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.
Comments sent by e-mail/facsimile are subject to the deadline above for written comments.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAWS & REGULATIONS

Existing law provides for the regulation of health insurers by the Department of Insurance. Part 2 of the California Insurance Code, Life and Disability Insurance, in addition to regulating life and disability insurance regulates the provision of health insurance by insurance companies to consumers. Several Chapters and Sections regulate various aspects of health insurance. Chapter 1-The Contract, regulates various aspects of the insurance contract. It is within this Chapter that Sections 10133.8 and 10133.9 (the statutes on which these regulations are based) are found. Other significant health insurance related statutes included in the Insurance Code are: Chapter 1.5-Health Coverage Contract Notifications; Chapter 4-Standard Provisions in Disability Policies; Chapter 7-Disability Insurance Disclosures; Chapter 8-Small Employer Health Insurance; and, Chapter 9.5-Individual Access to Contracts for Health Care Services.

SB 853 (Chapter 713, Statutes of 2003) requires the Department to adopt regulations establishing standards and requirements for health insurers to provide insureds with access to language assistance in obtaining health care services. Pursuant to the statute, the regulations require health insurers to implement a Language Assistance Program (Program) to assess insureds language and linguistic needs, provide interpretation services to insureds, translate vital documents into indicated/threshold languages, and report to the Department regarding internal policies and procedures related to cultural appropriateness. The statute requires the Department to consider specified factors and to seek public input. The Department is required to regularly review information regarding health insurer compliance and make recommendations for changes and to report certain information biennially to the Legislature.

EFFECT OF PROPOSED REGULATIONS

Insurance Code sections 10133.8 and 10133.9 require the Department of Insurance to develop and adopt regulations establishing standards and requirements for health insurers to provide insureds, free of charge, with appropriate access to language assistance (translated written documents and oral interpretation services) in obtaining covered benefits.

The proposed regulations will set out in specific detail the Language Assistance Program that health insurers are required to develop and implement for the provision of translation and interpretation services to limited English proficient insureds in accessing health care services. The proposed regulations will prescribe the manner in which health insurers shall develop and implement the Language Assistance Program including: deadlines for compliance; notices to insureds regarding language assistance services; the completion of the required needs assessment of the language preferences and linguistic needs of insured; specifics regarding the translation of vital documents; the establishment of individual access to interpretation services; health insurer monitoring, evaluation and reporting to the Department and Department of Insurance reporting to the Legislature.

SPECIFIC OBJECTIVES OF REGULATIONS

The proposed regulations are modeled after the Department of Managed Health Care's regulations mandated by the same legislation, SB 853 (Chapter 713, Statutes of 2003). The proposed regulations are in plain English except to the extent that technical terms could not be avoided. Any unavoidable technical terms are defined in plain English.

The proposed regulations establish the date by which every health insurer shall develop and implement a Language Assistance Program, describe the elements required to be included in the health insurers written policies and procedures for the Language Assistance Program, and define the training requirements for health insurers and contractors/providers of health care. The proposed regulations also define the type and contents of the notice that health insurers must provide to insureds describing the availability of language assistance services. These sections will provide details and clarity to health insurers regarding their responsibilities in establishing a Language Assistance Program. [Section 2538.3]

The proposed regulations explain to health insurers how to assess the linguistic needs and language preferences of their insureds, the types of survey methods the health insurer may utilize, and how often the needs assessment shall be updated. These sections will provide health insurers with specific elements required to be included in the assessment of linguistic needs of their insureds. [Section 2538.4]

The proposed regulations provide information about the requirements for translation of vital documents by health insurers, how to determine the indicated/threshold languages into which vital documents shall be translated, the documents that the health insurer does not have to translate, and the exception to this rule. The proposed regulations provide health insurers with a process for phase-in implementation of translation of vital documents to insureds. These sections will provide health insurers with detailed information about what documents are required to be translated and how to determine into which languages the documents must be translated. [Section 2538.5]

The proposed regulations describe health insurer's responsibility to provide individual access to oral interpretation services for limited English proficient insureds, the detailed methods for providing said services, and provide guidelines for the use of family, friends, and minors as interpreters. The proposed regulations also provide a process for the use of family or friends as interpreters that must be followed by contractors/providers of health care. The proposed regulations provide guidelines for health insurers in establishing contractor compliance, quality assurance activities and financial responsibility for the costs of translation and interpretation services. These sections provide health insurers with detailed information regarding the provision of oral interpretation services to limited English proficient insureds. [Section 2538.6]

The proposed regulations inform health insurers as to their evaluation and monitoring responsibilities related to the implementation of their Language Assistance Program, and the requirements for contracts between health insurers and contractors/providers of health care. These

sections will provide health insurers with the specifics on monitoring the effectiveness of their Language Assistance Program and contracting with providers. [Section 2538.7]

The proposed regulations set forth the requirements for health insurer reporting to the Department and the fines and penalties for late reporting or non-compliance. The proposed regulations also establish the requirements for Departmental reporting to the Legislature on the Health Care Language Assistance Program of health insurers. These sections are necessary to inform health insurers of their duties and responsibilities related to reporting to the Department. [Section 2538.8]

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the health, safety and welfare of the people of the State that the regulations apply to businesses. The purpose of the proposed regulations is to set forth the specific details of how and when health insurers shall establish a language assistance program to provide translation and interpretation services to their limited English proficient insureds as they access health insurers contracted medical care. The proposed regulations are necessary to ensure compliance by health insurers with these requirements and ensure that health insurers monitor compliance with these regulations by health insurer contractors/health care providers.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

LOCAL MANDATES

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

FISCAL IMPACT

The Commissioner has determined that the proposed regulations will result in no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The Commissioner has determined that the proposed regulations will result in no non-discretionary cost or savings to any local agencies and no cost or savings in federal funding to the State. The Commissioner has determined that the proposed regulations may result in costs or savings to a state agency.

EFFECT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY TO COMPETE

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that will be affected by these regulations are health insurers and their contractors/health care providers.

Health insurers are responsible for development of a Language Assistance Program. Many health insurers already are required by other laws to provide translation and interpretation services to insureds. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses; (2) Consolidation or simplification of compliance and reporting requirements for businesses; (3) The use of performance standards rather than prescriptive standards; (4) Exemption or partial exemption from the regulatory requirements for businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner estimates that the proposed regulations may create employment opportunities for individuals to provide translation and interpretation services to health insurance consumers; however, the number is negligible. Interested parties are invited to comment on this issue.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner has determined that for some health insurers there may be additional costs. The additional costs may include conducting the needs assessment of their insured population, developing the Language Assistance Program, monitoring and evaluating the Program and reporting to the Department of Insurance as required. However, for certain health insurers, the impact will be mitigated by the fact that they also sell HMO type health plans and are required to develop the identical Language Assistance Program under the Department of Managed Health Care regulations. In addition, some health insurers already have in place systems and procedures to handle language assistance needs of limited English proficient insured.

The Commissioner has also determined that for some health insurers there may be additional costs to provide the translating and interpreting services to insureds. For health insurers and contractors/providers of health care with on-site staff who speak the indicated/threshold languages, the costs will be negligible. The Commissioner has determined that there is no other impact the proposed regulations will have on private persons or business entities other than described above but invites interested parties to comment on the issue.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations may affect small business, to the extent a contractor/health care provider may qualify as a small business. Pursuant to Government Code section 11342.610, subdivision (b), paragraph (2), health insurers are not small businesses.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as

effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the initial statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action is contained in the rulemaking file, which is available for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

15-DAY CHANGES

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

FINAL STATEMENT OF REASONS

Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

- To search, enter "RH05047901" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (in this case, "10133.8") or search by keyword ("health insurer", "language assistance", "limited English proficient insureds", "translation" and "interpretation" for example). Then, click on the "Submit" button to display links to the various filing documents.
- To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the

"Health Care Language Assistance Program" link, and click it. Links to the documents associated with these regulations will then be displayed.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

Dated: August 11, 2006

JOHN GARAMENDI, Insurance Commissioner

By _____
Elena Fishman, Staff Counsel